

Date Mailed March 26, 2001
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BEFORE THE  
PUBLIC SERVICE COMMISSION OF WISCONSIN

Investigation Into Ameritech Wisconsin's Unbundled Network  
Elements

6720-TI-161

**ORDER GRANTING EXTENSION OF TIME TO ANSWER INTERROGATORY**

On December 15, 2000, Wisconsin Bell, Inc. d/b/a Ameritech Wisconsin (Ameritech), sought confidential treatment of information filed with the Commission under control numbers 00876, 00877, 00878, 00879, 00883, 01422, 01421, 01420, 01419, 01418, and 01417.<sup>1</sup>

On January 5, 2001, pursuant to Wis. Admin. Code § PSC 2.06, I asked for additional information concerning specified portions of the submitted materials. Ameritech failed to respond to my interrogatory. As a result, on February 13, 2001, (Second Determination) I denied confidential status to those portions of the information about which the interrogatory inquired per Wis. Admin. Code § PSC 2.06(4)(b).

I based the interrogatory on staff's belief that certain submitted information was estimated data as opposed to actual. Examples of such information would include: fill factors, installation factors, maintenance factors and structure factors. But for staff's belief that certain information was estimates, it is likely that confidentiality may have been granted to that information. A February 21, 2001, determination of confidentiality (Third Determination) concerning similar information (Ameritech cost studies and related information) supports this

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<sup>1</sup> For a description of the information associated with each control number, see the February 13, 2001, Confidentiality Determination in docket 6720-TI-161.

conclusion. The Third Determination recognized that some of the information previously believed to be estimates was actual company specific information.

Ameritech knew or should have known that it had an obligation to answer the interrogatory. Failing to do so, Ameritech did not ask for an extension to answer, did not ask for reconsideration of the Second Determination, did not ask the Commission to review such determination and did not seek judicial review. Ameritech itself diminished the competitive implications of its own information by ignoring its obligation and by itself failing to protect the information. Nevertheless, I hesitate to impose such a drastic remedy as release of the information.

Wis. Admin. Code § PSC 2.06(4)(b) provides that “[I]f an extension has not been granted and if the applicant fails to answer all the interrogatories within 30 days after the date the commission mails the interrogatories, the commission shall deny the application.” That Ameritech failed to answer the interrogatory within the 30 days is not at issue. The issue is how to deal with the company’s failure to answer.

Under general principles of statutory construction, the word "shall" in a statute setting a time limit is ordinarily presumed to be mandatory. Nevertheless, courts have on occasion held that statutory time limits are merely directory despite the use of the mandatory word "shall" where such a construction is intended.

Rules of statutory construction apply with equal force to rules of construction of administrative rules.

I find no indication that the Commission meant to limit the exercise of any delegated decision making under Wis. Admin. Code § PSC 2.06, or that the language itself was intended to

be limiting in nature. There is, however, indication that the Commission's intent in drafting Wis. Admin. Code § PSC 2.06 was to place the burden on confidential filers for providing information upfront that would aid the Records Custodian in making determinations under the Open Records Law. The careful balancing of the competing interests of the telecommunications industry to protect its confidential commercial or financial information and the performance of the Commission's public responsibilities to allow public access to information under the Commission's custody, mitigates against strictly construing the rule to deny a request for confidentiality on merely procedural grounds.

That the Commission sanctioned public release of information for failure to comply with Commission rules is evident on the face of Wis. Admin. Code § PSC 2.06(4)(b). It is troubling when an applicant ignores Commission rules in light of the proposed sanction. However, I believe that the Commission also meant to weigh any sanction against the extent and nature of any violation and the reason for the violation. That is not to say that today's decision grants carte blanche to confidential filers to ignore written interrogatories and gamble for minimum or no sanction. To the contrary, this decision takes into consideration nothing more than Ameritech's representations, as expressed in the original filing, that the information is competitively sensitive. A reasonable person would deduce that sensitivity of data translates into lost revenue.

ACCORDINGLY, it is reasonable to delay those portions of the February 13, 2001, order denying confidentiality in part and making public the information on March 26, 2001,<sup>2</sup> until

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<sup>2</sup> A correction was made to this order correcting the date on which information was scheduled for public release from March 21 to March 26, 2001.

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20 days from the mailing date of this decision.<sup>3</sup> Additionally, Ameritech shall submit a response to the February 5, 2001, interrogatory within 10 days from the mailing date of this decision.

The portions of the February 13, 2001, order granting confidentiality remain intact.

Ameritech, upon receipt of this decision, shall serve a copy of this decision on all persons listed on the service list for docket 6720-TI-161 and shall file proof of service with the Commission within three calendar days of service.

Dated at Madison, Wisconsin, \_\_\_\_\_

For the Commission:

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Jeffrey J. Patzke  
Administrative Law Judge

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<sup>3</sup> The Commission has authority to amend its orders under Wis. Stat. § 196.39.